

Testimony
Of
Chairman Michael Jandreau
Lower Brule Sioux Tribe
before the
United States Senate
Committee on Indian Affairs
June 26, 2002

Chairman Inouye, Senator Campbell, members of the Committee, thank you for holding this important hearing on the critical topic of trust fund reform and S. 2212, the Indian Trust Fund and Asset Management and Reform Advancement Act of 2002, and for the opportunity to testify. I am appearing this morning in my capacity as the chairman of the Lower Brule Sioux Tribe and as a member of both Great Plains Tribal Chairman's Association and the Secretary of Interior's Task Force on Indian Trust Reform.

Mr. Chairman, as you know, there are many challenges facing us in Indian Country – from tribal economic development, to Indian health care, to education. But none more critical than the Federal Government's management – or mismanagement – of the funds it has collected

on behalf of Indian people and tribes across the country. The management of Indian trust assets goes to the very core of the trust responsibility that the Federal Government owes to Indian peoples. The Great Plains tribes, and countless others across the United States, sacrificed millions of acres of fertile, sacred land in exchange for certain guarantees from the Federal Government. Among those were military protection, and guarantees of water, hunting, fishing, and mineral rights.

Throughout the Nineteenth Century, the Federal Government negotiated treaties with Indian tribes as sovereign nations. These treaties formed the basis for the Federal Government's trust responsibility towards Indian tribes . . . a fact that has been repeatedly recognized and reaffirmed by the federal courts and the Congress.

We are not talking about the Federal Government's money – this is Indian people's money. This is revenue that has been generated from land owned by Indians and tribes, and held in trust by the Federal Government for the benefit of its owners. According to the most recent available figures, the Federal Government maintains over 1,400 trust accounts for 260,000 individual Indians and 315 recognized Indian tribes. By some estimates, the Federal Government owes over \$9 billion in trust revenue to Indian peoples and tribes. Tragically, the Federal Government cannot make a true and accurate accounting for how much has been collected, how much should be collected, how much is owed, and to whom. This despite the fact that the Federal Government has a fiduciary responsibility and is charged with the highest standard of care.

While pending lawsuits seek to compensate Indian peoples and tribes for past errors, the fundamental structure of the Department of Interior must be changed if we hope to prevent more turmoil and mismanagement in the future. Furthermore, these lawsuits address only with the Federal Government's responsibility toward *individual* Indian trustees. While it is important that individuals are fairly treated and properly reimbursed for the revenue generated by their land, the Federal Government's overall trust responsibilities are much broader than that, and do not run to individual Indians but to *tribes*. It is the tribes, as distinct and sovereign nations, with which the Federal Government negotiated and signed treaties. It is the tribes that exist to preserve the social, cultural, and religious heritage of Indian peoples. Thus, Federal efforts to properly administer Indian trust obligations must recognize the role of the tribes.

Congress has attempted to address this issue on many occasions, the most recent being the American Indian Trust Fund Management Reform Act of 1994. That year, it created the Office of American Indian Trust, which is headed by the Special Trustee for American Indians. This special trustee was to prepare a comprehensive plan for trust fund management reform and then enact those reforms. The Office would then dissolve once the problems were addressed. Needless to say, the Office of American Indian Trust still exists, because the problems still exist. I acknowledge this was a well-intentioned step, but it did not provide the solutions needed to address this problem.

In response to the ongoing trust management problems at the Bureau of Indian Affairs (BIA), and ongoing litigation, Interior Secretary Norton announced a plan for reorganization in

November of last year. She planned to remove the trust management authority from the BIA and place it in a new agency, the Bureau of Indian Trust Asset Management (BITAM). This plan was developed, announced, and implementation was begun before any tribal leaders were consulted. This was an unacceptable process that developed an untenable result.

For many reasons, BITAM is not the correct solution to the Indian trust problem. Most importantly, it severely fragments the authority BIA needs to administer the numerous and diverse Indian programs and also deal with problems facing Indian Country. It does so by removing one of BIA's core functions and sending it to an unconnected agency. To do so would simply dilute the power of the current Assistant Secretary for Indian Affairs and further fragment the authority of the BIA. Indian Country needs a strong BIA with clear authorities and adequate resources. Therefore, we oppose BITAM.

We do support S. 2212, the Indian Trust Fund And Asset Management And Reform Advancement Act of 2002. This bill was developed in consultation with Indian leaders and points us in the correct direction. It will bring additional resources to bear on the problem, and more importantly, it will concentrate the power to handle Indian affairs within one office and make one individual responsible and accountable for change. It would also create an advisory board to provide the Secretary with advice on trust reform matters and make the existing Special Trustee report directly to a Deputy Secretary for Trust Management and Reform. Finally, the law would give Indian tribes discretion to develop their own plans for managing tribal trust funds. This authority would enable them to supervise the collection and distribution of these

funds, while maintaining access to the Federal Government's expertise and guidance in trust management matters.

While we may seek additional changes as this legislation progresses, the Great Plains Tribal Chairman's Association and the Lower Brule Sioux Tribe advocate making one significant change to S. 2212 at this time. **We feel this bill should mandate and create a Deputy Secretary for Indian Affairs who is responsible for both trust management activities and all other duties currently under the charge of the BIA.** The Department of Interior would then have two deputy secretary positions – a Deputy Secretary of Indian Affairs and a Deputy Secretary of Interior – both of equal stature within the Department. **The Deputy Secretary of Indian Affairs could then, in turn, supervise two Assistant Secretaries: an Assistant Secretary for Indian Trust Assets, and an Assistant Secretary for Indian Programs with their responsibilities divided accordingly.**

These changes would raise the prominence of Indian responsibilities within Interior, and establish a clear chain of command from the Deputy Secretary for Indian Affairs to the Secretary and ultimately to the President of the United States. We feel that only in this way can we be assured these ongoing problems will receive the attention, resources, and structure that they need to ensure they are properly addressed.

In closing, let me assure you that Indian people take very seriously the trust obligations owed to them by the Federal Government. These responsibilities stem from the agreements, negotiated in good-faith, between the United States of America and Indian tribes as autonomous,

sovereign nations. Significantly, these agreements between the United States and Indian nations are codified in treaties – the highest law of the land. This special status has been repeatedly recognized by Congress and sanctified by federal courts throughout this country. In its management of Indian trust assets, the United States federal government clearly has not lived up to its responsibility to Indian tribes and individuals.

Mr. Chairman, my fellow tribal leaders and I stand ready to assist you in your effort to fix this severely broken trust system. The United States of America has failed Indian people. We feel that S. 2212, with some modifications, can begin to remedy the trail of broken promises. Thank you again for an opportunity to address this committee, and I look forward to answering any questions that you may have.